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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

MARSHA BRANDON,

Defendant and Appellant.

B208130

(Los Angeles County  
Super. Ct. No. ZM011754)

APPEAL from an order of the Superior Court of Los Angeles County. Maria E. Stratton, Judge. Affirmed.

Gerald J. Miller, under appointment by the Court of Appeal for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Chung L. Mar and Allison H. Chung, Deputy Attorneys General, for Plaintiff and Respondent.

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Defendant Marsha Brandon appeals an order under Penal Code section 2970 continuing her involuntary treatment as a mentally disordered offender under the Mentally Disordered Offenders Act (MDO, Pen. Code §§ 2960, et seq.<sup>1</sup>) Brandon contends that the trial court's finding she presented a substantial danger of physical harm to others is not supported by substantial evidence, and the trial court subverted the burden of proof by inferring such dangerousness from the commitment offense alone. We affirm.

### **FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

On June 10, 2000, Brandon stalked and threatened a physician who she believed had harmed members of her family. Brandon was convicted and sentenced to prison; on May 1, 2003 she was paroled on condition that she be committed to Patton State Hospital under the MDO. In 2005, Brandon was placed in the conditional release program (CONREP), but absconded; she was readmitted to Patton State Hospital on February 21, 2007.<sup>2</sup>

On August 24, 2007, the People filed a petition to extend Brandon's involuntary treatment, which was set to expire November 11, 2007, for an additional year. Brandon denied the petition and waived her right to a jury trial. A four-day trial on the petition commenced on February 6, 2008 and concluded April 10, 2008. Brandon stipulated that she has a severe mental disorder.

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<sup>1</sup> All statutory references herein, unless otherwise noted, are to the Penal Code.

<sup>2</sup> Brandon had developed an obsession with the physician in the mid-1980s and followed the doctor, a woman, to Los Angeles. In 1996, Brandon was convicted of stalking, and was sentenced to two years in prison. Upon her release from prison, in 1998 Brandon was admitted to a Los Angeles area hospital for psychiatric care. She believed evil spirits were in her refrigerator and failed to feed her children. In 2000, Brandon was living as a transient, but was taking psychotropic medication. In 2003 she was admitted to Patton State Hospital and diagnosed with paranoid schizophrenia. In 2004, Brandon was transferred to CONREP, where she was not in compliance with her medication. Brandon became paranoid, was flirtatious, dressed inappropriately, and absconded.

At trial, Dr. Ochuko Diamreyan, a psychiatrist at Patton State Hospital, testified Brandon suffers from paranoid schizophrenia. Brandon hallucinates, hears voices, has disorganized speech and behavior, and poor hygiene. Furthermore, Brandon has no insight into her illness, has poor impulse control, and is not in remission. Regarding her commitment offense, Brandon made statements that she would follow the doctor all the way to the ends of the earth and believed the doctor killed her mother and 14 members of her family, and that the doctor had gang members following her. Brandon went to a restaurant where she believed the doctor had poisoned the food.

After her return to Patton State Hospital in February 2007, Brandon was not in compliance with her treatment program. Although she was taking her medication, she did not attend group counseling and made inflammatory comments to other patients and swore at staff members. She became angry with one of the other patients whom she believed was reporting her to staff, and yelled and threatened the other patient. In July 2007, Brandon falsely told the staff she had a job and attempted to leave the unit.

Brandon does not take her medication for high blood pressure, nor does she allow her blood to be taken to monitor the side effects of her psychotropic medication. Brandon agrees to the psychotropic medication, but does not believe the blood pressure medication is necessary. Dr. Diamreyan wanted to change Brandon's psychotropic medication because she is still paranoid, lacks impulse control, violates hospital rules, and lacks insight into her illness. Brandon had a poor history of compliance with her medication that led to decompensation, and her absconding from CONREP. In a protected environment, Brandon had demonstrated poor impulse control, infraction of the rules, failure to cooperate with her treatment plan, altercations with staff and other patients, and inability to control her anger.

For these reasons, Dr. Diamreyan did not feel Brandon had the skills to be able to manage her mental illness if released into the community without supervision, because when faced with a stressful situation, Brandon decompensates to the extent that she might become dangerous to others, act under a delusion, or stop taking her medication. She is not in remission. "The best prediction of the future is [Brandon's] history. She has

demonstrated that in the past she stopped taking her medication and decompensated, she became more delusional and became more dangerous, by stalking the doctor, and by not feeding her kids when she had those similar delusion[s].” Brandon needs to be more open about discussing the crime, and the incidents in the hospital trouble Dr. Diamreya because they are precursors of dangerousness. “[I]f [Brandon] is not able to handle [hospital] rules, when she’s free in the community she is not going to be able to cope with other challenges that may predispose her to stop taking her medication and decompensate.”

While Dr. Diamreya believes Brandon is able to identify three triggers that could cause decompensation, and identify her medication and how it helps her, Brandon is not in full remission because she has enough insight to recognize that her delusions resulted in her being placed in treatment, and will not talk about them. She remains guarded because she knows if she talks about the delusions, she will not be released. Because Brandon does not talk about the crime, it is difficult for her doctors to know whether she accepts what she did was wrong and will work towards changing her behavior.

Dr. Mark Jaffe conducted a forensic examination of Brandon, and in his opinion, she is a chronic paranoid schizophrenic and she is not in remission. Brandon has superficial insight and some confusion about the crime she committed. Brandon minimizes the offense by stating she only called the doctor a few times, when in fact she called the doctor 160 times in one day and wore disguises to the doctor’s office. Brandon’s obsession with the doctor began in 1984, and the doctor has moved to different parts of the country, yet Brandon has followed her to each new location. After Brandon was released from prison, she again developed delusions that the physician was trying to kill her. She has not been able to live in the community successfully.

When Brandon was placed in CONREP, she only lasted 14 months before decompensating and absconding from CONREP. She had been dressing flamboyantly, speaking flirtatiously with her therapist, and making statements that people were doing odd things to her. She is confused about her current condition in the hospital, and denies having any behavioral problems. She accused her treating doctor of “being against her,”

which was of concern because the controlling offense involved Brandon's belief that another doctor was harming her and her family. Brandon was not going to her group sessions or taking her medication.

Dr. Jaffe testified that Brandon represents a substantial danger of physical harm to others as a result of her mental illness because she has not followed the treatment recommendations while she has been in the hospital. She is not stable enough to be safely treated in the community. Her guardedness indicates poor insight into her condition. Brandon will have more rules to follow in the community than at the hospital.

Dr. Sanjay Sahgal, a forensic psychiatrist, testified on Brandon's behalf that he evaluated Brandon on September 19, 2007. He concluded that she suffers from schizophrenia, but that she is in remission. Brandon had no clinical signs of psychosis. Her thoughts were organized, there was no evidence of hallucinations. She understood her illness, her need for treatment, and the link between her illness and past criminal behaviors. She expressed embarrassment over her treatment of the victim, and believes her medication has helped her condition. He believed Brandon to be sincere. He did not believe she posed a substantial risk of physical harm to others as a result of her mental illness because she was taking her medication, had not engaged in any assaults, and had been sociable. She acknowledged that her belief that the doctor had killed her family was not true.

Brandon testified on her own behalf that she has schizophrenia with delusions, but denied having any current delusions. She acknowledged that her belief that the victim, Dr. Campbell, was going to harm her was a delusion. Brandon asked for a reduction in her medication because it was raising her liver enzymes and causing her to gain weight. She left CONREP without permission because her brother was on dialysis and she wanted to see him. She acknowledged this showed poor judgment.

She met the victim Dr. Campbell in Missouri in 1984. Brandon came to California because she had family here. She ran into Dr. Campbell, who is an OBGYN, at a clinic in the mid 1990s. Brandon believed Dr. Campbell had something to do with her mother's death. She did not know how many phone calls she made to Dr. Campbell.

At the conclusion of trial, the court sustained the petition because it did not believe Brandon was in remission, and ordered her placed in CONREP.<sup>3</sup>

## **DISCUSSION**

Brandon contends that substantial evidence does not support the trial court's finding she presented a substantial danger of physical harm to others, and the trial court erred in inferring such dangerousness from the commitment offense alone, thereby subverting the burden of proof. The People contend this appeal is moot and must be dismissed because Brandon's commitment period expired November 11, 2008.

### **A. We Consider This Appeal Because It Presents a Controversy That Is Capable of Repetition But Will Evade Review.**

We do not render opinions upon moot questions or abstract propositions, or declare principles or rules of law which cannot affect the matter in issue in the case before us. A case is moot where our ruling will have no practical effect or it cannot provide the parties with effective relief. (*People v. Rish* (2008) 163 Cal.App.4th 1370, 1380.) However, where an issue before us is capable of repetition, yet evading review, and involves a matter of public interest, we may address the merits of such appeal that otherwise is moot. (*Ibid.*) However, because section 2970 petitions must be filed on an annual basis, it is probable the trial court would adjudicate a subsequent petition to extend a commitment for an additional year before the appellate court would have an opportunity to review an earlier sustained petition, as is the case here. (*Ibid.*; *People v. Hurtado* (2002) 28 Cal.4th 1179, 1186.) We therefore address the merits of Brandon's appeal.

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<sup>3</sup> On December 15, 2008, Brandon filed a habeas petition in pro per alleging she was being kept at Patton State Hospital in violation of the court's order that she be placed in CONREP. We dismissed the petition as moot on February 26, 2009.

**B. Substantial Evidence Supports the Trial Court's Finding that Brandon Represented a Substantial Danger of Physical Harm to Others.**

*1. The Experts' Testimony Constituted Sufficient Evidence that Brandon Represented a Substantial Danger of Physical Harm to Others.*

Under the MDO, the State Department of Mental Health (SDMH) must involuntarily treat prisoners released on parole who are mentally disordered. Such treatment must be on an in-patient basis unless the SDMH determines that the parolee can be safely treated on an out-patient basis. (§ 2962.)<sup>4</sup>

Sections 2970 and 2972 set forth the procedures for continuing the involuntary treatment of a mentally disordered offender after termination of his or her parole or release from prison. (*People v. Rish, supra*, 163 Cal.App.4th at p. 1382.) Within 180 days prior to the termination of parole, or release from prison if the prisoner has not agreed to treatment as a condition of parole, a report must be submitted to the district attorney if the prisoner's disorder is not or cannot be kept in remission without treatment. (§ 2970.) The court must conduct a hearing on a petition for continued treatment, and the prisoner has a right to a jury trial. (§ 2972, subd. (a).)

To recommit defendant under the MDO, the People must prove beyond a reasonable doubt that (1) defendant has a severe mental disorder; (2) the disorder is not in remission or cannot be kept in remission without treatment; and (3) by reason of the

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<sup>4</sup> The SDMH must treat the prisoner as a condition of parole if he or she meets the following criteria: (1) the prisoner has a severe mental disorder that is not in remission or cannot be kept in remission without treatment (§ 2962, subd. (a)); (2) the disorder was the cause of or an aggravating factor in the commission of the crime for which the prisoner was imprisoned (§ 2962, subd. (b)); (3) the prisoner received a determinate sentence and the crime was one of a list of specified offenses (§ 2962, subd. (e)); (4) the prisoner has been in treatment for the disorder for 90 days or more within the year before parole or release (§ 2962, subd. (c)); and (5) the prisoner has been evaluated by the person in charge of his or her treatment, a practicing psychiatrist or psychologist from the SDMH, and a chief psychiatrist of the Department of Corrections has certified to the Board of Parole Hearings that the foregoing criteria are met and the prisoner represents, by reason of the severe mental disorder, a substantial danger of physical harm to others (§ 2962, subd. (d)). The finding of substantial danger of physical harm does not require proof of a recent overt act. (§ 2962, subd. (f).)

disorder, the patient represents a substantial danger of physical harm to others. (§ 2972, subd. (c).) Whether a defendant by reason of a mental disease, defect or disorder presents a substantial danger to society is a question of fact and may be established with expert testimony. (*People v. Crosswhite* (2002) 101 Cal.App.4th 494, 507.)<sup>5</sup>

Although the MDO defines the first two elements of section 2972, it does not define the third element, “substantial danger of physical harm.”<sup>6</sup> (*In re Qawi* (2004) 32 Cal.4th 1, 24.) “In context, it appears to mean a prediction of future dangerousness by mental health professionals.” (*Ibid.*) In *People v. Gibson* (1988) 204 Cal.App.3d 1425 (*Gibson*), the court addressed a prior version of the MDO statute and concluded that the People must establish both that the defendant suffered from a mental illness that caused or contributed to the commitment offense, and that the defendant was dangerous as a consequence of that illness. (*Id.* at pp. 1439-1440.)

Although an MDO proceeding is civil in nature, the People are required to prove MDO status beyond a reasonable doubt. (§ 2972, subd. (a); *People v. Burroughs* (2005) 131 Cal.App.4th 1401, 1405.) An MDO determination is reviewed for substantial evidence, and we determine whether on the entire record a rational factfinder could have found defendant presented a substantial danger of physical harm to others. We consider all evidence in the light most favorable to the People, and draw all reasonable inferences

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<sup>5</sup> *People v. Crosswhite*, *supra*, 101 Cal.App.4th 494 applied section 1026.5, which applies the same standard of substantial danger of physical harm to others. (*Id.* at pp. 507-508.)

<sup>6</sup> Section 2962, subsection (a) defines “severe mental disorder” as “an illness or disease or condition that substantially impairs the person’s thought, perception of reality, emotional process, or judgment; or which grossly impairs behavior; or that demonstrates evidence of an acute brain syndrome for which prompt remission, in the absence of treatment, is unlikely. The term “severe mental disorder” as used in this section does not include a personality or adjustment disorder, epilepsy, mental retardation or other developmental disabilities, or addiction to or abuse of intoxicating substances.” It defines “remission” as “a finding that the overt signs and symptoms of the severe mental disorder are controlled either by psychotropic medication or psychosocial support.”



in favor of the trial court's findings. (*People v. Clark* (2000) 82 Cal.App.4th 1072, 1082.)

Here, we find there was substantial evidence to support the trial court's conclusion Brandon constituted a substantial danger of physical harm to others. Both Drs. Diamreyan and Jaffe testified that Brandon suffered from paranoid schizophrenia, was not in remission, and represented a substantial danger of physical harm to others. They based their conclusions on her lack of insight into her condition; her lack of impulse control; her inability to follow hospital rules; and her failure to follow her treatment plan. They believe that she lacked the skills if released into the community to manage her illness without supervision, and that if she were to be faced with a stressful situation, Brandon would decompensate to the extent she would stop taking her medication, become dangerous to others, or act under a delusion. Brandon's reliance on Dr. Sahgal's testimony to the contrary does not undermine our conclusion. "[I]f the circumstances and reasonable inferences justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant reversal of the judgment. [Citation.]" (*In re James B.* (2003) 109 Cal.App.4th 862, 872.)

2. *The Trial Court Did Not Undermine the People's Burden of Proof.*

Brandon also complains the trial court undermined the People's burden to establish her dangerousness beyond a reasonable doubt. She argues her offense by itself was insufficient to establish the element of dangerousness because it was a non-violent offense and there was no evidence she was ever violent or assaultive towards anyone; the expert testimony did not establish she was dangerous to others; and the court did not follow the reasonable doubt standard as evidenced by its comment that she was "very close" to being in remission. (See, e.g., *People v. Gibson, supra*, 204 Cal.App.3d at pp. 1439-1440; §§ 2962, subd. (e)(2)(Q) [offenses supporting involuntary commitment]; 2962, subd. (e)(2)(P) [offense involved a threat of force or violence].)

First, Brandon's reliance on *Gibson* fails because *Gibson* addressed a prior version of the MDO; we apply the current version.<sup>7</sup> Second, her crime fits within the MDO, which applies only to defendants who are serving prison sentences for crimes contained in section 2962, subdivision (e). That subdivision lists several specific crimes, and additionally provides that "[a] crime not enumerated . . . in which the prisoner used force or violence, or caused serious bodily injury" was a qualifying offense. (§ 2962, subd. (e)(2)(P); see also *People v. Butler* (1999) 74 Cal.App.4th 557, 560 [stalking constitutes qualifying offense for purposes of MDO].) Stalking consists of repeatedly following or harassing another person, the making of a credible threat, with the intent to place the person in fear of death or great bodily injury. (*People v. Ewing* (1999) 76 Cal.App.4th 199, 210.) Here, Brandon stalked and made a criminal threat against the physician; and, as discussed above, substantial evidence supports the trial court's finding of dangerousness.

Finally, the trial court did not undermine the People's burden of proof. In remarking that she was close to being in remission, the trial court was commenting on the evidence, not on the quantum of proof necessary to establish her dangerousness beyond a reasonable doubt.

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<sup>7</sup> Stats. 2000, c. 135 (AB 2539), § 137.

**DISPOSITION**

The order of the Superior Court is affirmed.

ZELON, J.

We concur:

PERLUSS, P. J.

JACKSON, J.